

SERVED: November 18, 2003

NTSB Order No. EA-5064

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Issued under delegated authority (49 C.F.R. 800.24)
on the 18th day of November, 2003

_____)	
MARION C. BLAKEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-16847
v.)	
)	
JERRY M. AIROLA,)	
)	
Respondent.)	
_____)	

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the appeal filed by the respondent in this proceeding because it was not perfected by the filing of a timely appeal brief, as required by Section 821.48(a) of the Board's Rules of Practice (49 C.F.R. Part 821).¹ We will grant the motion.

¹Section 821.48(a) provides as follows:

§ 821.48(a) **Briefs and oral argument.**

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief.

The record establishes that respondent filed a timely notice of appeal from the law judge's July 16th oral initial decision, but he did not file an appeal brief within 50 days after that date, that is, by September 4, 2003.²

In the absence of good cause to excuse respondent's failure either to perfect his appeal by filing a timely appeal brief or to submit a timely extension request for filing the brief after the deadline, dismissal of his appeal is required by Board precedent. See Administrator v. Hooper, 6 NTSB 559 (1988).³

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted; and
2. The respondent's appeal is dismissed.

Ronald S. Battocchi
General Counsel

²The law judge affirmed an order of the Administrator suspending respondent's commercial pilot certificate for a period of 45 days, for his alleged violations of sections 91.151(b), 91.103(a), and 91.13(a) of the Federal Aviation Regulations, 14 CFR Part 91.

³Counsel for respondent's assertion that he overnighted the appeal brief to the Board on September 5th because he found out on September 4th that he could not fax the brief does not meet the good cause standard. That discovery would not have prevented placing the brief in the mail on the 4th. We note, moreover, that filing by facsimile is not an authorized method of service in non-emergency appeals. See Rule 7(a)(3), 49 C.F.R. Part 821.7(a)(3).